

## **Assembly Bill No. 728**

### **CHAPTER 312**

An act to amend Sections 7085 and 7091 of, to add Section 7122.2 to, and to repeal Section 7085.8 of, the Business and Professions Code, relating to contractors.

[Approved by Governor August 30, 2002. Filed with  
Secretary of State September 3, 2002.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

**AB 728, Correa. Contractors: arbitration of disputes.**

Existing law, the Contractors' State License Law, provides for arbitration of disputes arising out of cases filed with or by the Contractors' State License Board. The registrar is the executive officer who carries out the board's administrative duties and tasks delegated by the board and who is authorized to issue a citation for a violation of specified provisions that may result in the assessment of a civil penalty.

Existing law authorizes the registrar to refer specified complaints where the licensee is in good standing at the time of the referral to arbitration, with the concurrence of both the licensee and the complainant, if there is evidence that the complainant has suffered or is likely to suffer damages greater than \$5,000 and less than \$50,000. The registrar is required to refer these complaints to arbitration where the licensee is in good standing at the time of the referral if the contract price is equal to or less than \$5,000 or if the demand for damages is equal to or less than \$5,000. Existing law also requires that an accusation or citation against a licensee be filed by the registrar within a specified time period.

This bill would change the amount in dispute requirement for mandatory arbitration to \$7,500 or less. The bill would require that referrals to the arbitration program be subject to the same statute of limitation as accusations or citations by the registrar. The bill would delete the requirement that a licensee be in good standing at the time of a referral in order to qualify for referral to arbitration. The bill would provide that the disassociation of any qualifying partner, responsible managing officer, or responsible managing employee from a license that has been referred to arbitration does not relieve the qualifying partner, responsible managing officer, or responsible managing employee from responsibility for complying with an award rendered as a result of an arbitration referral.

*The people of the State of California do enact as follows:*

SECTION 1. Section 7085 of the Business and Professions Code is amended to read:

7085. (a) After investigating any verified complaint alleging a violation of Section 7107, 7109, 7110, 7113, 7119, or 7120, and any complaint arising from a contract involving works of improvement as defined in Section 7151 and finding a possible violation, the registrar may, with the concurrence of both the licensee and the complainant, refer the alleged violation, and any dispute between the licensee and the complainant arising thereunder, to arbitration pursuant to this article, provided the registrar finds that:

(1) There is evidence that the complainant has suffered or is likely to suffer material damages as a result of a violation of Section 7107, 7109, 7110, 7113, 7119, or 7120, and any complaint arising from a contract involving works of improvement as defined in Section 7151.

(2) There are reasonable grounds for the registrar to believe that the public interest would be better served by arbitration than by disciplinary action.

(3) The licensee does not have a history of repeated or similar violations.

(4) The licensee was in good standing at the time of the alleged violation.

(5) The licensee does not have any outstanding disciplinary actions filed against him or her.

(6) The parties have not previously agreed to private arbitration of the dispute pursuant to contract or otherwise.

(7) The parties have been advised of the provisions of Section 2855 of the Civil Code.

For the purposes of paragraph (1), “material damages” means damages greater than seven thousand five hundred dollars (\$7,500) and less than fifty thousand dollars (\$50,000).

(b) In all cases in which a possible violation of the sections set forth in paragraph (1) of subdivision (a) exists and the contract price is equal to or less than seven thousand five hundred dollars (\$7,500), or the demand for damages is equal to or less than seven thousand five hundred dollars (\$7,500) regardless of the contract price, the complaint shall be referred to arbitration, utilizing the criteria set forth in paragraphs (2) to (6), inclusive, of subdivision (a).

SEC. 2. Section 7085.8 of the Business and Professions Code is repealed.

SEC. 3. Section 7091 of the Business and Professions Code is amended to read:



7091. (a) A complaint against a licensee alleging commission of any patent acts or omissions that may be grounds for legal action shall be filed in writing with the registrar within four years after the act or omission alleged as the ground for the disciplinary action. An accusation or citation against a licensee shall be filed or a referral to the arbitration program outlined in Section 7085 shall be referred within four years after the patent act or omission alleged as the ground for disciplinary action or arbitration or within 18 months from the date of the filing of the complaint with the registrar, whichever is later, except that with respect to an accusation alleging a violation of Section 7112, the accusation may be filed within two years after the discovery by the registrar or by the board of the alleged facts constituting the fraud or misrepresentation prohibited by the section.

(b) A complaint against a licensee alleging commission of any latent acts or omissions that may be grounds for legal action pursuant to subdivision (a) of Section 7109 regarding structural defects, as defined by regulation, shall be filed in writing with the registrar within 10 years after the act or omission alleged as the ground for the disciplinary action. An accusation and citation against a licensee shall be filed within 10 years after the latent act or omission alleged as the ground for disciplinary action or within 18 months from the date of the filing of the complaint with the registrar, whichever is later, except that with respect to an accusation alleging a violation of Section 7112, the accusation may be filed within two years after the discovery by the registrar or by the board of the alleged facts constituting the fraud or misrepresentation prohibited by Section 7112. As used in this section “latent act or omission” means an act or omission that is not apparent by reasonable inspection.

(c) An accusation regarding an alleged breach of an express, written warranty for a period in excess of the time periods specified in subdivisions (a) and (b) issued by the contractor shall be filed within the duration of that warranty.

(d) The proceedings under this article shall be conducted in accordance with the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the registrar shall have all the powers granted therein.

(e) Nothing in this section shall be construed to affect the liability of a surety or the period of limitations prescribed by law for the commencement of actions against a surety or cash deposit.

SEC. 4. Section 7122.2 is added to the Business and Professions Code, to read:

7122.2. Notwithstanding Section 7068.2 or any other provisions of this chapter, the disassociation of any qualifying partner, responsible



managing officer, or responsible managing employee from a license that has been referred to arbitration pursuant to Section 7085 shall not relieve the qualifying partner, responsible managing officer, or responsible managing employee from responsibility for complying with the award rendered as a result of an arbitration referral. Section 7122.5 shall apply to any qualifying partner, responsible managing officer, or responsible managing employee of a licensee that fails to comply with an arbitration award once it is rendered.

